

## Department of State

## § 171.22

days prior to the specified disclosure date.

[55 FR 9318, Mar. 13, 1990]

### Subpart C—Executive Order 12065 Provisions

#### § 171.20 Definitions.

As used in this subpart, the following definitions shall apply:

(a) The term *agency* means Federal agency including department, agency, commission, etc., as defined in 5 U.S.C. 552(e).

(b) The term *classification* refers to the determination that certain information requires protection against unauthorized disclosure in the interest of national security, coupled with the designation of the level of classification: Top Secret, Secret or Confidential.

(c) The term *classification authority* means the authority vested in an official of an agency to originally classify information or material which is determined by that official to require protection against unauthorized disclosure in the interest of national security. It is also the authority to prolong classification.

(d) The term *classified information* means information or material, herein collectively termed information, that is owned by, produced for or by, or under the control of the United States Government, and that has been determined pursuant to Executive Order 12065, prior orders, or other orders or statutes, to require protection against unauthorized disclosure, coupled with the designation of the level of classification.

(e) The term *declassification* refers to the determination that particular classified information no longer requires protection against unauthorized disclosure in the interest of national security. Such determination shall be by specific action or automatically after the lapse of a requisite period of time or the occurrence of a specified event. If such determination is by specific action, the material shall be so marked with the new designation.

(f) The term *document* has the meaning of “record” as set forth in § 171.10(b).

(g) The term *foreign government information* is: (1) Information provided to the United States by a foreign government or international organization of governments in the expectation, express or implied, that the information is to be kept in confidence, or (2) information, requiring confidentiality, produced by the United States pursuant to a written joint arrangement with a foreign government or international organization of governments. A written joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record of the joint arrangement.

(h) The term *Presidential appointees* includes former officials of the Department of State or other U.S. Government agencies who held policy positions and were appointed by the President, by and with the advice and consent of the Senate, at the level of Ambassador, Assistant Secretary of State, or above. It does not include Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

#### § 171.21 Identifying information.

For the request to be processed, it must describe the material sufficiently to enable a professional employee of the Department who is familiar with the subject area of the request to locate the record with a reasonable amount of effort. Whenever a request does not reasonably describe the information, the requester shall be notified that unless additional information is provided, or the scope of the request is narrowed, no further action will be taken.

#### § 171.22 Access to records.

All classified information except as noted in § 171.23, shall be subject to review for declassification upon request of a member of the public, a government employee, or an agency.

(a) A request for declassification under the Order shall be acted upon within 60 days from the date on which the request reaches the appropriate receiving office.

(b) Subject to paragraph (f) of this section, when it receives a request, the Department, if it is the originating agency, shall determine whether the information or any reasonably segregable portion of it no longer requires protection. If so, the Department shall promptly make such information available to the requester, unless withholding it is otherwise warranted under applicable law.

(c) When the Department receives a request for information in a document which is in its custody, but which was classified by another agency, it shall refer the request to the appropriate agency for review. The Department shall also notify the requester of the referral unless the association of the reviewing agency with the information requires protection in the interest of national security. The reviewing agency shall respond directly to the requester and shall notify the Department of its determination.

(d) During the transition period allowed by Executive Order 12065 from declassification at 30 years to declassification at 20 years, all requests for classified United States Government originated information over 30 years old not previously declassified and transferred to the Archives will be processed according to paragraphs (b) and (c) of this section.

(e) In response to a request for a classified document in its possession, the Department may not refuse to confirm the existence or non-existence of the document unless the fact of its existence or non-existence would itself be classifiable.

(f) In the case of requests for documents containing foreign government information, the Department, if it is also the agency which initially received the foreign government information, shall determine whether the foreign government information in the document may be declassified and released in accordance with policies or guidelines, consulting with other interested agencies as necessary. If the Department is not the agency which received the foreign government information, it shall refer the request to the original receiving agency, which shall take action on the request.

(g) In considering requests for mandatory review, the Department may decline to review again any request for material which has been reviewed within one year and denied, except as the request constitutes an appeal under subpart G of this subchapter.

**§ 171.23 Determination in disputed cases.**

(a) Information that continues to meet the legal requirements for classification under section 1–3 of the Order at the time of review for declassification is presumed to require continued protection and may be withheld from disclosure under the Order and section (b)(1) of the Freedom of Information Act. However, as stated in section 3–303 of the Order, it is government policy to consider the public interest in disclosure when information is reviewed for declassification. In some cases, the need to protect information that continues to meet the requirements of classification may be outweighed by the public interest in disclosure of information. When such a question arises, the authority reviewing the information shall refer the question to the relevant Top Secret authority in the Department of State to make a policy determination whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from the disclosure. In making such determination, that authority shall respect the intent of the Order to protect foreign government information and confidential foreign sources. That authority shall also consult with other officials in the agency as the circumstances warrant.

(b) In the Department of State, if such a case is appealed by the requester of the information after receiving a notice of denial, the case shall be referred to the Appeals Review Panels in accordance with the Department's appeal procedures. If the Panel should decide that the case raises a question as to whether the need to protect information that continues to meet the requirements of classification is outweighed by the public interest in disclosure, the question shall be referred to a principal officer for determination.